

12-30-2014

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MICHAEL ALMEN DOTTS,

Defendant-Appellant.

Nos. 42058, 42059

Bonner Co. Case Nos.
CR-2000-802, CR-2000-600

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNER**

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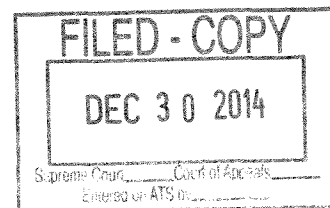


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STATEMENT OF THE CASE

Nature of the Case

Michael A. Dotts appeals from the district court's denials of his I.C.R. 35(a) motion to correct an illegal sentence and I.C.R. 35(c) motion to correct the district court's computation of sentence.

Statement of Facts and Course of the Proceedings

In 2000, Dotts stole an ATV four-wheeler from the residence of a Bonner County deputy sheriff and traded it for methamphetamine. (PSI, p.2; PSI attachments, p.4.) In a separate incident, Dotts and other individuals utilized stolen checks to make unauthorized transactions totaling \$927.89. (PSI, p.2; PSI attachments, pp.12-23.) Dotts pled guilty to one count of grand theft and one count of forgery. (R., Vol. I, pp.73-75.) The district court imposed concurrent unified sentences of 12 years, each with five years fixed. (R., Vol. I, pp.80-83; Vol. II, pp.75-78.) Over the next 10 years, Dotts was released on parole three times, only to violate his parole and be returned to custody each time. (See 3/10/14 "Affidavit of Susie D. Jensen."¹) During one of these periods of parole release, Dotts was incarcerated in Oregon on a different case for more than two years. (See *Id.*)

In 2013, Dotts filed an I.C.R. 35(a) motion to correct an illegal sentence. (R., Vol. I, pp.169-173.) In the motion, Dotts argued that his sentence was illegal

¹ Dotts submitted this affidavit, which summarizes Dotts' Idaho and Oregon incarceration history, after the hearing on his I.C.R. 35 motions, but prior to the entry of the district court's order denying the motions. (See 3/10/14 "Affidavit of Susie D. Jensen"; R., Vol. I, pp.195-203.) The district court referenced the motion in its dismissal order. (R., Vol. I, pp.196, 201.)

because he was being detained beyond the maximum indeterminate 12-year term imposed by the district court. (Id.) The district court appointed counsel to represent Dotts on the motion. (R., Vol. I, pp.182-183.) Through appointed counsel, Dotts then filed an I.C.R. 35(c) motion to correct the district court's computation of credit for time served. (R., Vol. I, pp.191-192.)

At a hearing on the two I.C.R. 35 motions, Dotts clarified his arguments. (See generally Tr.) With regard to the I.C.R. 35(a) motion, Dotts asserted that he should have received credit for time served while he was released on parole, and, in the alternative, the forfeiture of this "street time" constituted cruel and unusual punishment in violation of the Eighth Amendment. (Tr., p.7, L.11 – p.8, L.19.) With regard to the I.C.R. 35(c) motion, Dotts argued that he was entitled to credit for time he spent incarcerated in Oregon between 2011 and 2013. (Tr., p.7, Ls.5-10.) In support of this second motion, Dotts submitted an inmate log indicating that while he was incarcerated in Oregon, the Oregon Department of Corrections received a detainer request from Idaho. (Defendant's Exhibit A.) The district court denied both motions. (R., Vol. I, pp.195-203.) Dotts filed timely notices of appeal in both cases. (R., Vol. I, pp.204-206; Vol. II, pp.173-175.) The Idaho Supreme Court consolidated these appeals. (R., Vol. II, pp.180-181.)

ISSUE

Dotts states the issue on appeal as:

Did the district court err when it denied Mr. Dotts's Rule 35 Motions?

(Appellant's brief, p.3.)

The state rephrases the issue as follows:

Has Dotts failed to show that the district court erred in denying his I.C.R. 35(a) motion to correct an illegal sentence, and his I.C.R. 35(c) motion to correct the district court's computation of sentence?

ARGUMENT

Dotts Has Failed To Show That The District Court Erred In Denying His I.C.R. 35(a) Motion To Correct An Illegal Sentence, And His I.C.R. 35(c) Motion To Correct The District Court's Computation Of Sentence

A. Introduction

Dotts appeals from the district court's order denying his I.C.R. 35(a) motion to correct an illegal sentence, and his I.C.R. 35(c) motion to correct the district court's computation of its sentence. (See generally Appellant's brief.) However, a review of the applicable law reveals that I.C.R. 35 is not the proper mechanism for the challenges Dotts attempted to raise. Therefore, he cannot show that the district court erred in denying these motions.

B. Standard Of Review

"As a general matter, it is a question of law as to whether a sentence is illegal or was imposed in an illegal fashion, and this Court exercises free review over questions of law." State v. Lute, 150 Idaho 837, 839, 252 P.3d 1255, 1257 (2011) (citing State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009)). Whether the trial court properly applied the law governing credit for time served is also question of law over which the appellate court exercises free review. State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005); State v. Brashier, 130 Idaho 112, 113, 937 P.2d 424, 425 (Ct. App. 1997). An appellate court defers to the trial court's findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous. State v. DuVal, 131 Idaho 550, 552-553, 961 P.2d

641, 643-644 (1988); State v. Davis, 139 Idaho 731, 734, 85 P.3d 1130, 1133 (Ct. App. 2003).

C. The District Court Did Not Err In Denying Dotts' I.C.R. 35(a) Motion

Idaho Criminal Rule 35(a) is a narrow rule that allows a trial court to correct a sentence that is illegal from the face of the record any time. State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009). Whether a sentence is illegal is a question of law that is freely reviewed by the court on appeal. Id. An illegal sentence under I.C.R. 35(a) is one in excess of a statutory provision or otherwise contrary to applicable law. State v. Alsanea, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003).

In this case, Dotts filed an I.C.R. 35(a) motion asserting that he was illegally denied credit for time he spent released on parole prior to revocation. (R., Vol. I, pp.169-173.) However, an I.C.R. 35(a) motion is not the proper mechanism for challenging an alleged error in the Department of Correction's calculations of a prisoner's sentence.² See Mickelsen v. Idaho State Correctional Institution, 131 Idaho 352, 355, 955 P.2d 1131, 1134 (Ct. App. 1998). "[A] petition for writ of habeas corpus is an appropriate mechanism for challenging an alleged impropriety or error in the Department [of Correction's] computation of a prisoner's sentence." Id. (citing Bates v. Murphy, 118 Idaho 239, 243, 796 P.2d

² While the district court considered the merits of Dotts' I.C.R. 35(a) motion, a district court's lack of jurisdiction to reach the merits of an issue may be raised at any time. State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004). Further, this Court may affirm the district court's denial of the motion on any correct alternative theory. State v. Mireles, 133 Idaho 690, 694, 991 P.2d 878, 882 (Ct. App. 1999).

116, 120 (1990); Calkins v. May, 97 Idaho 402, 545 P.2d 1008 (1976); State v. Vega, 113 Idaho 756, 758, 747 P.2d 778, 780 (Ct. App. 1987)). Since Dotts' I.C.R. 35(a) motion³ was not the appropriate mechanism to challenge the credit for time served while on parole, the district court did not err by denying the motion.

Further, even if the merits of Dotts' I.C.R. 35(a) motion are considered, the district court still did not err by denying the motion. As the district court correctly concluded, and as Dotts acknowledges in his brief, a person is only entitled to credit for a period of actual *incarceration*, not for time the person is released on parole prior to revocation. (Appellant's brief, p. 4 (citing I.C. § 18-309; Winter v. State, 7 Idaho 103, 105-107, 785 P.2d 667, 669-671 (Ct. App. 1989).) As I.C. § 20-228 provides, parole time prior to revocation is credited against a sentence of imprisonment *only* if the Commission for Pardons and Parole, in its discretion, authorizes it. See Gibson v. Bennett, 141 Idaho 270, 274-75, 108 P.3d 417, 421-22 (Ct. App. 2005). Because Dotts was not entitled to credit for time spent on parole prior to revocation, his sentence was not illegal. Likewise, for the

³ In addition to the I.C.R. 35(a) motion, Dotts also sought credit for time spent on parole release prior to revocation in a petition for a writ of habeas corpus filed in state court. See Dotts v. Little, 2014 Unpublished Opinion No. 814, Docket No. 42135 (Idaho App., November 14, 2014). The Idaho Court of Appeals affirmed the district court's dismissal of Dotts' habeas petition, holding that Dotts was not entitled to credit for time spent on parole release prior to revocation, and that this forfeiture of time did not constitute cruel and unusual punishment in violation of the Eighth Amendment. Id. Therefore, Dotts' argument in this appeal is barred, in the alternative, by the doctrine of *res judicata*. See State v. Rhoades, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000) (The doctrine of *res judicata* prevents re-litigation of issues that have been previously decided in a final judgment or decision in an action between the same litigants.).

reasons previously discussed by the Idaho Court of Appeals in Dotts v. Little, Dotts cannot show that the forfeiture of this parole time constituted cruel and unusual punishment in violation of the Eighth Amendment. See Dotts, 2014 Unpublished Opinion No. 814, pp.3-4 (finding no Eighth Amendment violation where Dotts will have been incarcerated for 12 years, and on parole for nearly three and one-third years, upon the competition of the sentences imposed for grand theft and forgery). The district court therefore did not err when it denied Dotts' I.C.R. 35(a) motion to correct an illegal sentence.

D. The District Court Did Not Err In Denying Dotts' I.C.R. 35(c) Motion

Idaho Criminal Rule 35(c) permits a defendant to move "to correct a court's computation of credit for time served," where the time served was "granted pursuant to Idaho Code Sections 18-309 or 19-2603." Idaho Code § 18-309 requires courts to grant defendants credit for time served for "any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense which the judgment was entered." Idaho Code § 19-2603 requires courts to grant individuals credit for time served from the date of service of a bench warrant, or the functional equivalent of a bench warrant, upon violation of a probation. See also State v. Covert, 143 Idaho 169, 139 P.3d 771 (Ct. App. 2006).

In this case, Dotts did not challenge the district court's computation of his pre-judgment incarceration, or its computation of any incarceration following the service of a bench warrant for a probation violation. Instead, Dotts asserted that the Idaho Department of Correction erred by failing to give him credit, upon his

parole revocation, for time served while he was in custody in Oregon on a separate case. (R., Vol. I, pp.191-192; Tr., p.7, Ls.5-10.) Because Dotts' challenge does not involve a granting of time served pursuant to either I.C. §§ 18-309 or 19-2603, I.C.R. 35(c) is not the proper mechanism to bring such a challenge. Therefore, Dotts cannot show that the district court erred in dismissing this motion.

Further, even if the merits of Dotts' I.C.R. 35(c) motion are considered, and even if I.C.R. 35(c) applied to credit for time served computations associated with the revocation of *parole*, the district still did not err when it denied the motion. There is no indication in the record that the detainer requested by the Idaho Department of Correction kept Dotts in custody past the completion of any Oregon sentence. (See State's Exhibits A, C.) Dotts did not argue to the contrary to the district court or on appeal. (See generally Tr.; Appellant's brief, p.5.) Therefore, the detainer did not constitute "the functional equivalent of a bench warrant." See State v. Kesling, 155 Idaho 673, 677-678, 315 P.3d 861, 865-866 (Ct. App. 2013) (holding that because Kesling failed to show that he was held in Florida custody beyond the end of his Florida sentences, he could not show that any Idaho detainer request constituted "the functional equivalent of a bench warrant," and thus, Kesling was not entitled to any time served for time spent in Florida custody); compare with Covert, 143 Idaho at 170-171, 139 P.3d at 772-773 (Ct. App. 2006) (concluding that where Covert was simultaneously arrested on an agent's warrant for a probation violation, and for new criminal conduct, the agent's warrant was the "functional equivalent of a bench warrant,"

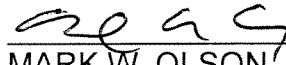
because Covert could have bonded out on the new charges and been released if he had not been also held pursuant to the agent's warrant).

Dotts cannot show that I.C.R. 35 was the proper mechanism for the challenges he raised in this case, or that he is entitled to relief based on a review of the merits of these challenges. He has therefore failed to show that the district court erred in denying his I.C.R. 35 motions.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Dotts' I.C.R. 35(a) motion to correct an illegal sentence, and his I.C.R. 35(c) motion correct the district court's computation of its sentence.

DATED this 30th day of December 2014.



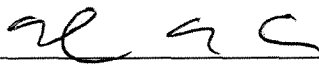
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of December 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

KIMBERLY E. SMITH
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



MARK W. OLSON
Deputy Attorney General

MWO/pm